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Conservation Development and Planning

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Hillary Gitelman
Director

TO: Application File #P09-00243-UP and #P09-00385-ECPA

FROM: Donald Barrella, Planner III

DATE: April 6, 2011

RE: Response to Comments - Peju Black Forest Vineyard
Use Permit Exception (Creek Setbacks) and Vineyard Conversion
File No's. P09-00243-UP and P09-00385-ECPA:
SCH# 2010122095: APN 018-060-068

INTRODUCTION

This memorandum has been prepared by County staff to respond to comments received by the Napa County Conservation, Development and Planning Department (Napa County) on the Proposed Initial Study / Mitigated Negative Declaration (Proposed IS/MND) for the Peju Black Forest Vineyard Use Permit Exception #P09-00243-UP and vineyard Conversion #P09-00385-ECPA (proposed project). An IS/MND is an informational document prepared by a Lead Agency, in this case, Napa County, that provides environmental analysis for public review and for the agency decision-makers to consider before taking discretionary actions related to any proposed project that may have a significant effect on the environment. The Proposed IS/MND analyzed the impacts resulting from the proposed project and where applicable, identified mitigation measures to minimize the impacts to less-than-significant levels.

This memorandum for Peju Black Forest Vineyard Use Permit Exception and Vineyard Conversion #P09-00243-UP and #P09-00396-ECPA Proposed IS/MND presents the name of the persons and/or organizations commenting on the Proposed IS/MND and responses to the received comments. This memorandum, in combination with the Proposed IS/ND, completes the Final IS/MND.

CEQA PROCESS

In accordance with Section 15073 of the CEQA Guidelines, Napa County submitted the Proposed IS/MND to the State Clearinghouse for a 30-day public review period starting January 3, 2011. In addition, Napa County circulated a Notice of Intent to Adopt the Proposed IS/MND to interested agencies and individuals. The public review period ended on February 1, 2011. During the public review period, Napa County received three comment letters on the Proposed IS/MND. Table 1 below lists the entities that submitted comments on the Proposed IS/MND during the public review and comment period. The comment letters are attached.

TABLE 1
Comments Received on the Draft IS/MND

Comment# / Attachment	Comments Received from	Date Received
1 / A	California Department of Fish and Game (DFG)	February 1, 2011
2 / B	California Department of Forestry and Fire Protection (CalFire)	January 26, 2011
3 / C	California Regional Water Quality Control Board (RWQCB)	January 20, 2011

In accordance with CEQA Guidelines Section 15074(b), Napa County considers the Proposed IS/MND together with comments received, both during the public review process and before action on the project, prior to adopting the Proposed IS/MND and rendering a decision the project. The CEQA Guidelines do not require the preparation of a response to comments for negative declarations; however, this memorandum responds to comments received. Based on review of the comments received, no new, potentially significant impacts beyond those identified in the Proposed IS/MND would occur, no mitigation measures or project revisions must be added to reduce impacts to a less than significant level and none of the grounds for recirculation of the Proposed IS/MND as specified in State CEQA Guidelines Section 15073.5 have been identified. All potential impacts identified in the Proposed IS/MND were determined to be less-than-significant.

RESPONSE TO COMMENTS

Comment No. 1 California Department of Fish and Game – DFG (Attachment A)

Response to Comment 1.1: As detailed in the project description of the IS/MND the project proposes a total ±14.2-acre vineyard development. Of that ±7.8-acres have already been developed and planted to vineyard, ±5.5-acres have been cleared but not developed to vineyard which currently contains cover crop, and ±0.9-acres are currently oak woodland. Therefore, of the proposed ±14.2-acre project site approximately ±13.3-acres have either been developed to vineyard or have been cleared of vegetation and ±0.9-acres currently consist of oak woodland. The use permit (UP) and agricultural erosion control plan (ECPA) applications have been submitted by the property owner to retain the ±7.8-acres of existing vineyard (approximately 0.5-acres of which encroach into required creek setbacks), complete vineyard development within the ±5.5-acres that have already been cleared, and develop an additional ±0.9-acres of oak woodland. Implementation of **Mitigation Measure BR-1** would reduce the ±0.9-acres of additional oak woodland proposed for removal by ±0.35-acres, resulting in a total of ±0.55-acres of additional cleared land. For clarity, a map that shows the proposed vineyard as mitigated has been included as Attachments D and E. Also see *DFG Response to Comments 1.2 through 1.4* for additional discussion.

Response to Comment 1.2: As detailed in the environmental setting section of the IS/MND, it was estimated that of ±13.3-acres of the project site that was previously cleared and developed (i.e. areas currently in vineyard or cover crop) ±7.2-acres consisted of non-native grassland and ±6.2-acres consisted of mixed oak woodland. Because ±13.3-acres of the ±14.2-acre project site have already been

cleared no protocol level plant surveys or tree surveys were warranted or conducted. Historical air photos and information provided by the applicant were utilized to determine the approximate number of trees located within the project area: it is estimated that the ±13.3-acres of the project area that has been cleared contained ±90 trees, and within the ±0.9-acres that have not been cleared that are proposed for development has been estimated to contain ±33 trees (Napa County GIS, ICE Vegetation layer and Monticello Engineering). As further detailed in the IS/MND the ±0.35-acres located along the eastern side of proposed Vineyard Block 4 contains ±30 trees and proposed Vineyard Block 6 contains 3 trees. Implementation of **Mitigation Measure BR-1**, would eliminate the ±0.35-acres of proposed development along the eastern side of Vineyard Block 4, thereby reducing tree removal to 3 additional trees (above and beyond what has already been estimated to have been removed), resulting in the past and future tree removal of the project of approximately 93 trees.

The following reports and environmental data were utilized in the biological analysis of the IS/MND:

- Biological Assessment, Foothill Associates (July 2009). The assessment included site inspections by Brian Mayerle (Principal Biologist) on March 11, 2009 and June 23, 2009. The assessment also included a review of the latest California Natural Diversity Data Bank (CNDDDB) and California Native Plant Society (CNPS) sensitive species lists in effect on June 26, 2009.
- Summary of Acreages to be Cleared, Appendix B of the application materials, Monticello Engineering June 7, 2010.
- Napa County Geographic Information System (GIS) Sensitivity Maps/layers: Natural Diversity Database, Biological Points and Areas, Wetlands and Vernal Pools, Biological Critical Habitat Areas, Sensitive Biological Groups, Spotted Owl Habitat, Biological Areas, and Soil types.

These reports are attached to this Response to Comments (Attachment F), are incorporated herein by reference, and available in the project file for review. Napa County GIS layers can be accessed at <http://gis.napa.ca.gov/>

Also see Attachments D and E of this Response to Comments memo and *DFG Response to Comments 1.1, and 1.3.*

Response to Comment 1.3: As discussed in Section IV (**Biological Resources**) of the IS/MND the proposed development with the incorporation of **Mitigation Measures BR-1 and BR-2** and identified conditions of approval would ultimately result in the conversion or modification of ±13.85-acres of mixed oak woodland and non-native grassland to vineyard. The proposed project as mitigated in conjunction with existing development (residence, roads and pond) would result in ±17-acres of the 87.7-acre parcel being developed. Of the ±70.7-acres of the parcel that has not been developed or is proposed to be developed (i.e. existing development plus the proposed development as mitigated) approximately 67.5-acres contains slopes over 30% or falls within creek setbacks, leaving approximately 3.2-acres available for future development on the subject parcel (see Attachments D and E). As discussed in Section XVIII (**Mandatory Findings of Significance**) of the IS/MND, the subject parcel is located in the Dutch Henry Creek drainage (±2,570-acres) based on Napa County GIS, ±180-acres (7%) of the Dutch Henry Creek drainage area has been developed to vineyard. Of this total acreage approximately ±111-acres (or 4.3% of the drainage) were in vineyard prior to 1993 and ±69-acres (or 2.7% of the drainage) were developed to vineyard between 1993 and 2009. Currently, there are no other pending Agricultural Erosion Control Plan applications within the Dutch Henry Creek drainage. It is estimated that approximately 600 acres of the ±2,570-acres within the Dutch Henry

Creek Drainage has the potential to be developed because it occurs on slopes of less than 30% (see Attachment E) or outside of creek setbacks. In addition to the technical challenges of developing and farming vineyard on land with slopes over 30%, vineyard development on slopes of 30% or greater or within creek setbacks requires a Use Permit Exemption. Considering existing, approved, and future potential vineyard development in conjunction with development constraints, approximately 2,000 acres (or 78%) of the total watershed would be expected to remain undeveloped with vineyards or other agricultural crops.

Regarding potential cumulative impacts associated with future projects, the following policies and regulations are designed to minimize potential project specific, indirect, and cumulative impacts within the Dutch Henry Creek Watershed: 1) Napa County General Plan Conservation Element Policy CON-24c, which requires the retention of oak woodland at a 2:1 ratio as part of a project; 2) Section 18.108.025B of the Napa County Zoning Code (General provisions – Intermittent/perennial streams) requiring stream setbacks from 35 feet to 150 feet; 3) Section 18.108.060B of the Napa County Zoning Code (Slope regulations – Prohibited uses), which requires a use permit exception for development of slopes of 30% or greater; and, 4) Napa County General Plan Conservation Element Policy CON-17e, which requires no net loss of sensitive biotic communities and habitats of limited distribution through avoidance, restoration, or replacement where feasible – where avoidance, restoration, or replacement is not feasible, preserve like habitat at 2:1 ratio or greater within Napa County to avoid significant cumulative loss of valuable habitats as part of a project. These provisions are intended to minimize potential project specific, indirect, and cumulative impacts. As discussed in Section IV.e (**Biological Resources**) of the IS/MND the project as mitigated would retain both oak trees and oak woodland at greater than a 2:1 ratio: approximately 630 oak trees (or 84%) and 21-acres of oak woodland (or 75%) would be retained.

Because approximately 67.5-acres (or $\pm 77\%$) of the subject parcel and approximately 2000-acres (or $\pm 78\%$) of the Dutch Henry Creek watershed are expected to remain undeveloped as a result of past, present, and potential future projects, both project specific and cumulative impacts related to oak woodland loss have been determined to be less than significant; therefore, the project would not require additional mitigation requiring habitat be retained in perpetuity; as the mitigated project would not result in significant impacts to oak woodlands either on a project specific level or within the cumulative context. The loss of oak woodland has been adequately assessed, and potential project impacts considered less than significant due to the implementation of mitigation proposed in the IS/MND.

As discussed though out the IS/MND, potential impacts of the proposed project (in context of past vegetation removal) have been adequately assessed both on a project specific and cumulative level, and mitigation has been incorporated where necessary to reduce potentially significant impacts to a less than significant level. Therefore, as discussed in the IS/MND potential impacts to the litany of impact categories identified in the IS/MND have been adequately assessed and mitigated, where necessary, to a less than significant level.

Furthermore, the owner/applicant has included as part of the project the planting of 24 native trees on-site that would further reduce project specific and cumulative impacts associated with woodland loss.

Response to Comment 1.4: See *DFG Response to Comment #1.1 through 1.3* and Attachments D and E of this response to comment memo.

Response to Comment 1.5: The re-establishment/ re-routing of Unnamed Tributary No. 2 and associated 10-foot setback, mandated pursuant to Stipulated Judgment Case No. NSC 26-39559, were negotiated with the Department of Fish and Game (Don Richardson; retired) as part of the settlement agreement to address said violation; therefore, returning the drainage feature to pre-existing conditions and requiring different setbacks are not considered by this application. Should the DFG wish to re-negotiate the provisions of the Settlement Agreement with the owner/applicant they will need to initiate those negotiations. Furthermore, the defendant in this case was required to pay a total \$86,003.23 in civil penalties: \$13,192.48 of which went to the DFG as part of the settlement agreement.

Response to Comment 1.6: As discussed in Section IV.b (**Biological Resources**) of the IS/MND and *DFG Response to Comment 1.2*, ±0.35-acres of area to be cleared, located in two areas along the eastern side of proposed Vineyard Block 4 (±0.25-acres projecting off the northeastern side and ±0.1-acres at the southeastern corner), occur within an area mapped as Riparian Woodland (**Figure 5** of the IS/MND). The Biological Assessment (Foothill Associates 2009) indicates that the existing vineyard and cleared areas, in particular along the eastern edge of Vineyard Blocks 1 through 4 and along the western edge of proposed Vineyard Block 6 appear to have been confined to upland areas avoiding encroachment into riparian areas. Implementation of **Mitigation Measure BR-1** will require the reconfiguration of proposed Vineyard Block 4 to preserve the areas within mapped riparian woodlands that have not already been cleared (±0.35-acres) and protect existing riparian woodland and associated trees; therefore potentially significant impacts to riparian woodland and associated riparian habitat will be reduced to a less than significant level.

As discussed in Section IV (**Biological Resources**) of the IS/MND, as proposed the project would include reduced stream setbacks, required pursuant to Chapter 18.108.025 of the Napa County Code (Conservation Regulations – Stream setbacks), to 61 feet for approximately ±0.44-acres (±19,170 square feet) of existing vineyard where 85 feet and 105 feet are required. The encroachment areas are located along the east side of Vineyard Block 2 (see Attachments D and E): encroachments into required creek setbacks would range from 1 to approximately 50 feet. As discussed in **Section X.b (Land Use and Planning)** of the IS/MND the owner/applicant included, as part of this project, the removal and restoration of ±2,610 square feet (0.06 acres) of existing vineyard located in the southeastern corner of Vineyard Block 2 that currently encroaches into the required stream setback. As an alternative to vineyard removal, the County and the Napa County Resource Conservation District (RCD) considered potential measures that could reduce soil loss below required tolerances (as required by Use Permit findings in Section 18.108.040B) and ultimately allow for the retention of existing vineyard. The primary measure includes installing and maintaining a rock surface on the entirety of the eastern vineyard avenue of Vineyard Block 2. An additional measure includes the relocation of fencing along the eastern perimeter of Vineyard Block 2 to no greater than 20 feet from the end of vine rows, as specified in #P09-00243-UP and #P09-00385-ECPA: these provisions are included as conditions of approval should the project be approved. The minimum creek setback provided with this alternative would be 42 feet resulting in ±21,780 square feet of vineyard (including vineyard avenues) located with required stream setbacks. Considering the relatively small and narrow areas of encroachment into the stream setbacks (either as proposed or alternatively configured as described above), the adequate setbacks provided from Dutch Henry Creek (either a minimum of 42 feet or 61 feet), and that the

encroachments have not or would not remove riparian woodland or habitat (as discussed above and with implementation of **Mitigation Measure BR-1**) no significant impacts to the creek setback area or water quality are anticipated. All other required stream setbacks of the proposed project conform to Section 18.108.25 NCC, which range from 45 feet to 105 feet, depending on steepness of slope.

Therefore, the project as proposed or alternatively configured, in conjunction with the implementation of **Mitigation Measures BR-1, BR-2** and identified conditions of approval would not result in significant impacts to riparian habitat, sensitive natural communities, or stream setbacks.

Response to Comment 1.7: There are no activities associated with the proposed project that are anticipated to divert or obstruct the flow or change the bed, channel or bank of a river or stream; therefore, a Lake and Streambed Alteration Agreement (LSAA) is not anticipated. Pursuant to Stipulated Judgment NCS No.26-39559 Subparagraph III(7.D) Unnamed Tributaries/Watercourses No.1 and No. 2 shall be considered under the jurisdiction of the Department of Fish and Game and any further modification after the remediation measures required by subparagraph 7(A) (as described below) shall require a streambed alteration agreement from the Department of Fish and Game. Therefore, a streambed alteration agreement is not required for the proposed project or the stipulated remediation measures pursuant to the Stipulated Judgment. Also see DFG Response to Comment #1.5.

Remediation measures required by subparagraph 7(Ai) and 7(Aii) of Stipulated Judgment:

- Provision III.7 (Ai) – *A plan to prevent erosion and sedimentation of the bed bank channel of Unnamed Tributary No. 1 to Dutch Henry Creek, shown on Exhibit 3 hereto, that the Dutch Henry Defendants altered during installation of the southern vineyard on the Dutch Henry Canyon Property. At least five feet of a permanently vegetated set-back, located wholly on the subject property, shall be maintained between the bank of Unnamed Tributary No.1 and any road vineyard avenue of turnaround.*
- Provision III.7(Aii) – *A plan to reroute the course of the watercourse designated as Unnamed Tributary No. 2, shown on Exhibit 3 hereto, pm the Dutch Henry Property starting at the upstream opening of the 24" culvert. The flow-diffusion basin shall be removed and the existing culvert which this tributary is directed shall be permanently sealed. The watercourse shall be re-routed to cross the lower vineyard area such that it takes a south-westerly direction from the existing flow-diffusion basin and around the perimeter of the existing vineyard. Such watercourse shall be designed and installed to have sufficient capacity to handle maximum downstream flows calculated for the watershed of Unnamed Tributary No. 2 and shall connect with and be continuous with Unnamed Tributary No. 1 along the southern edge of the Dutch Henry Property. There shall be a minimum ten (10) foot setback of the watercourse from the vineyard of any vineyard avenue or turnaround, located wholly on the subject property. There shall be no in-channel road crossing of the re-routed watercourse. Any access road to the west/north-west portion of the Dutch Henry Property shall be over a culvert crossing. This setback shall be seeded with a permanent ground cover suitable for erosion control and shall be permanently maintained. The watercourse shall be designed and installed to minimize any sedimentation arising from water flow into and through it, e.g. planted or seeded with appropriated plant species. Temporary erosion control measures shall be implemented within the channel of unnamed Tributary No. 2 to minimize sedimentation from downstream flows.*

Additionally, the DFG comments and this memorandum have been forwarded to the owner/applicant and agent for their records so they are aware of this potential permit requirement, and approval of the vineyard project is contingent on the owner/applicant acquiring any and all other required Local, State and Federal permits necessary to implement the project prior to the commencement of work. This provision will be included as a condition of approval of the project should it be approved.

Response to Comment 1.8: As discussed in Section IV.a (**Biological Resources**) of the IS/MND no special status animal species were observed on the project site during the project site inspections conducted by Foothill Associates, and that preferred habitats for many of the special status animal species found in the general vicinity do not occur on project site. Therefore, no significant impacts to special status animals requiring mitigation were identified. However, to ensure that special status bird species and bat species are not adversely affected during the remainder of project implementation the following provisions (in accordance with DFG recommendations) will be included as conditions of approval should the proposed project be approved:

- **Bird Pre-construction surveys:** For earth-disturbing activities occurring during the bird breeding season (March 1 through July 31), a qualified wildlife biologist shall conduct preconstruction surveys for special status birds and their nests within 500-feet of earthmoving activities. The preconstruction survey shall be conducted no more than 14 days prior to vegetation removal and ground disturbing activities are to commence. If active bird nests are found during preconstruction surveys, a 300-foot no-disturbance buffer will be created around active raptor, bird of prey or owl nests and a 50-foot buffer zone will be created around the nests of other special-status birds during the breeding season or until it is determined by a qualified biologist that all young have fledged. These buffer zones may be modified in coordination with DFG based on existing conditions at the project site. Buffer zones shall be fenced with temporary construction fencing and remain in place until the end of the breeding season or until young have fledged.
- **Bat Pre-construction surveys:** A qualified wildlife biologist shall conduct preconstruction surveys for signs of bats, their roosts, or maternity sites within 500-feet of earth-disturbing activities. The preconstruction survey shall be conducted no more than 3 days prior to vegetation removal and ground disturbing activities are to commence. If bats are discovered during preconstruction surveys, a 150-foot no-disturbance buffer will be created around roosts or maternity sites. These buffer zones may be modified in coordination with DFG based on existing conditions at the project site. Buffer zones shall be fenced with temporary construction fencing and remain in place until it is determined by a qualified biologist that roosts or maternity sites are no longer in use and/or all young have fledged.

Response to Comment 1.9: Comment noted – no further response necessary.

Comment No. 2 California Department of Forestry and Fire Protection – CalFire (Attachment B)

Response to Comment 2.1: As discussed in the Environmental Setting Section of the IS/MND and DFG Response to Comment #1.2, of the ±6.2-acres of woodland that have already been removed ±0.2-acres (containing between 5 and 7 trees) may have been coniferous forest (Napa County GIS, ICE Vegetation layer and Figure 5 of the IS/MND). The IS/MND (page 3) identifies the California Department of Forestry and Fire Protection as a Trustee Agency and that a Timber Conversion Permit and Timber Harvest Plan may be required. According to Section 15386 of the California Code of Regulations a Trustee Agency is a state agency having jurisdiction by law over natural resources affected by a project. The CalFire comment letter and this memorandum have been forwarded to the owner/applicant: the owner/applicant is aware of this potential permit and plan. Approval of the vineyard development is contingent on the owner/applicant acquiring any/all other required Local, State and Federal permits

necessary to implement the project prior to the commencement of work associated with that project. This provision will be included as a condition of approval of the project if approved.

Comment No. 3 California Regional Water Quality Control Board – RWQCB (Attachment C)

Response to Comment 3.1: Comment noted – no further response necessary. Also see DFG Response to Comment #1.1 through #1.3 and #1.7 for additional detail.

Response to Comment 3.2: Requirements of the Stipulated Judgment Case No. NSC 26-39559 are specific to a separate property under the same ownership and are not the subject of this application or environmental review. No further response is necessary.

Response to Comment 3.3: As discussed in Section IV.c (**Biological Resources**) of the IS/MND no wetlands have been identified on the subject property or within the project area (Foothill Associates 2009, and Napa County GIS sensitivity maps/layers: Wetlands & Vernal Pools, Sensitive Biotic Groups Aquatic, and Soil types); therefore, no impacts to wetlands are anticipated.

The IS/MND (page 3) identifies the California Regional Water Quality Control Board (RWQCB) as a Responsible Agency and that a Section 401 Water Quality Certification from the RWQCB may be necessary for the proposed project and restorative activities required per the stipulated judgment. According to Section 15381 of the California Code of Regulations, a Responsibility Agency is “A public agency which proposes to carry out or approve a project, for which a Lead Agency (i.e. Napa County) is preparing or has prepared and EIR or Negative Declaration. For the purposes of CEQA, the term Responsible Agency includes all public agencies other than the Lead Agency which have discretionary approval power over the project.” Therefore the IS/MND recognizes that the RWQCB is a Responsibly Agency for the proposed project and activities on the subject parcel associated with the proposed project or restorative activities required per the stipulated judgment may require a permit from the RWQCB. Additionally, the RWQCB comment letter and this memorandum have been forwarded to the owner/applicant: the owner/applicant is aware of this potential permit. Approval of the vineyard development (and restorative activities per the judgment) is contingent on the owner/applicant acquiring any/all other required Local, State and Federal permits necessary to implement the project prior to the commencement of work associated with that project. This provision will be included as a condition of approval of the project if approved.

Also see RWCQB Response to Comment #1.2 regarding the owners Pope Valley property.

Response to Comment 3.4: As detailed in the Project Description of the IS/NMD the project requests a Use Permit Exception to required creek setbacks for vineyard installed adjacent to Dutch Henry Creek that encroaches into required creek setbacks pursuant to Chapter 18.108.025 of the Napa County Code (Conservation Regulations – Stream setbacks). As detailed in Section IV (**Biological Resources**) of the IS/MND the proposed project and associated creek setback encroachments do not include the alteration of, or filling of, wetlands or watercourses. The application does not include a request for a use permit exemption for restorative/corrective requirements associated with activities mandated under Stipulated Judgment NSC 26-39559 as a result of the presumed displacement of approximately 275 linear feet of an approximate 835 foot watercourse located below the existing reservoir on the property; therefore the IS/MND and associated Notice of Intent (NOI) to adopt the IS/MND does not include it in the analysis.

The IS/MND and associated NOI does however identify that these restorative activities will occur regardless of the outcome of the proposed project. As discussed in DFG Response to Comment #1.5 the re-establishment/re-routing of Unnamed Tributary No. 2 and associated 10-foot setback, mandated pursuant to Stipulated Judgment Case No. NSC 26-39559, was negotiated with the Department of Fish and Game as part of the settlement agreement to address said violation; therefore, the “mitigation” for displacement of the watercourse has been established by Stipulated Judgment Case No. NSC 26-39.

As discussed in RWQCB Response to Comment #3.2, past activities and requirements of the Stipulated Judgment Case No. NSC 26-39559 which are specific to the owners Pope Valley property within the Burton Creek drainage/watershed are not the subject of this application or environmental review.

As detailed RWCQB Response to Comment #3.3 the IS/MND and associated NOI recognizes the RWQCB as a Responsible Agency and that potential permits from the RWQCB may be necessary for activities on the subject property (either as part of the proposed project and/or associated with the provisions of the stipulated judgment), any penalties associated with those permits for activities conducted without acquiring necessary permits would be imposed at the discretion and authority of the RWQCB; therefore, the IS/MND and NOI do not need to be corrected to reflect this.

Also see DFG Response to Comment #1.1 through #1.3 and #1.7 for additional details.

Response to Comment 3.5: Comment noted – no further response necessary.



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Comment No. 1 - Attachment A



RECEIVED

FEB 01 2011

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

January 28, 2010

Mr. Donald Barrella
County of Napa
Conservation, Development & Planning Department
1195 Third Street, Room 210
Napa, CA 94559

Dear Mr. Barrella:

Subject: Black Forest Vineyard Conversion and Creek Setback Exception #P09-00385-
ECPA, Mitigated Negative Declaration, SCH #2010122095, County of Napa

This letter is intended to summarize the Department of Fish and Game's (DFG) concerns regarding the botanical, wildlife and fisheries impacts associated with the Black Forest Vineyard Conversion Project (Project) in the County of Napa (County). The Project proposes to 1) Develop after-the-fact erosion control measures on approximately 13.3 acres of previously developed vineyard associated with a Stipulated Judgement Case No. 26-39559, 2) Convert approximately 6.5 acres of oak woodland and oak savannah to vineyard which would remove a minimum of 30 trees, 3) Reduce riparian creek setbacks required pursuant to Chapter 18.108.025 of the Napa County Code of 85 feet and 105 feet down to between 61 feet and 42 feet on approximately 0.5 acres of existing vineyard.



The environmental setting and biological resource sections of the Mitigated Negative Declaration (MND) describe general land cover types within the existing and proposed vineyard blocks, but does not include specific data regarding plant surveys, tree surveys or locations of tree removals. Please provide more information regarding the biotic resources on-site including tree surveys, protocol level plant surveys and the biological assessment performed by Foothill Associates in July 2009. Without this information included, it is difficult to determine how impacts to biological resources will be mitigated to a level that is less-than-significant.



According to the project description and Stipulated Judgment, the applicant previously cleared approximately +/-13.3 acres of habitat, including +/- 90 trees without environmental review. Aerial photographs provided from 2002, 2005 and 2007 show a significant loss of oak woodland habitats in the south east section of the parcel between 2005 and 2007. This is considered a long-term and permanent loss of oak woodland habitat. DFG recommends that additional mitigation alternatives be developed to off-set the impacts for the continual and cumulative loss of wildlife habitat including oak woodland through habitat conversion. Potential mitigation scenarios include setting aside adjacent habitat for retention in perpetuity in combination with restoration or enhancement of existing habitat. DFG is available to work with the applicant to achieve these goals.



Comment No. 1 - Attachment A

Mr. Donald Barrella
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Mitigation Measure BR-1 modifies the originally proposed vineyard block 4 to remove 0.35 acres of proposed vineyard located within riparian woodland and avoids the removal of additional trees within the proposed vineyard block. More information is needed to determine if this mitigation effort reduces the level of impact to less-than-significant. Please provide a detailed vegetation map with each proposed vineyard block outlined, existing vineyard developed without environmental review, and revisions proposed as mitigation. All undisturbed areas to be conserved as mitigation should be placed into a conservation easement, managed, and protected in perpetuity from future development.

1.4

Mitigation Measure BR-2 requires temporary fencing to demarcate creek setback areas, and the Stipulated Judgement requires a minimum ten-foot setback from the re-established unnamed tributary. DFG is concerned the proposed setback width is inadequate and recommends all drainage features that were altered prior to environmental review should be returned to pre-existing conditions.

1.5

The Project proposes to reduce riparian creek setbacks required pursuant to Chapter 18.108.025 of the Napa County Code of 85 feet and 105 feet down to between 61 feet and 42 feet on approximately 0.5 acres of existing vineyard. Riparian areas are a key feature to in-stream habitat for aquatic life and contribute critical functions such as shade, food, and nutrients that establish the basis of the food chain. Due to the high biological value and physical functions provided by riparian areas, DFG is concerned the proposed setback widths are inadequate. At a minimum, DFG recommends the setback areas as required in Chapter 18.108.025 of the Napa County Code to protect and re-establish sensitive riparian resources.

1.6

All activities that will change the bed, channel or bank (including riparian resources) to re-establish the unnamed Tributary No. 2 and establish riparian setback areas will require Lake and Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. Issuance of an LSAA is subject to the California Environmental Quality Act (CEQA). DFG, as a responsible agency under CEQA, will consider the CEQA document for the project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement. To obtain information about the LSAA notification process, please access our website at www.dfg.ca.gov/1600; or to request a notification package, contact the Lake and Streambed Alteration Program at (707) 944-5520.

1.7

The biological resources section of the MND does not disclose potential impacts to bird species, bats or nests. Fish and Game Code § 3503.5 states it is unlawful to take, possess, or destroy any birds in the orders of Falconiformes or Strigiformes (birds-of-prey or raptors) or take, possess, or destroy the nest or eggs of any such bird, additionally Fish and Game Code §3503 protects the nests or eggs of any bird.

1.8

Comment No. 1 - Attachment A

Mr. Donald Barrella
January 28, 2011
Page 3

Activities such as tree removal, staging, access, excavation, grading and other ground-disturbing activities may create substantial noise impacts which may cause nest abandonment or premature fledging of nesting birds. If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds, a focused survey for active nests of such birds should be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) within 15 days prior to the beginning of project-related activities. If nesting birds are found, a 50-foot radius buffer should be established around the nest, a 300-foot radius buffer in the case of hawks and owls. The area should be fenced and avoided until the young have fledged, as determined by a qualified biologist. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with DFG, should be required before project work is reinitiated.

DFG recommends including the following mitigation measures for bats:
All trees suitable for use by bats shall be surveyed by a qualified biologist for signs of bats no earlier than two to three days prior to tree removal or conversion activities. If bats are discovered during the surveys then a buffer of 100 to 150 feet should be established. The optimal time to remove trees is September 15 through October 15, when young would be capable of flying and February 15 to April 1 to avoid hibernating bats and prior to formation of maternity sites.

DFG appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Ms. Suzanne Gilmore, Environmental Scientist, at (707) 944-5536; or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570.

Sincerely,



Scott Wilson
Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse

1.8 continued
1.9

Comment No. 2 - Attachment B



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

2210 West College Ave
Santa Rosa, CA 95401
(707) 576-2344
Website: www.fire.ca.gov



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JAN 26 2011

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

January 24, 2011

Donald Barrella
County of Napa
Conservation, Development, and Planning Department
1195 Thrid St., Ste 210
Napa, CA 94559

Reference: Black Forest Vineyard Conversion and Creek Setback Exception

Dear Mr. Barrella:

The California Department of Forestry and Fire Protect (CAL FIRE) appreciates the opportunity to review and provide the following input on this proposed project. The proposed project may have an impact upon our department's resource management responsibilities and our authority to issue the appropriate timber harvesting permit.

The property is may be located on forestland as defined by the California Forest Practice Act. Be advised that if trees are removed as part of the project, the landowner may be required to apply for a Timberland Conversion Permit or Exemption and file a Timber Harvesting Plan (THP) with CAL FIRE. These documents must be prepared by a Registered Professional Forester (RPF), and when approved, tree removal must be done by a Licensed Timber Operator (LTO). The landowner should contact the Sonoma-Lake-Napa Unit Forester at the address and telephone number indicated above for specific information as to what may be required for this project.

In addition, any development must comply with Public Resource Code (PRC) 4290 and California Code Regulations (CCR) 1270-1276 which address fire and life safety regulations. These regulations include, but are not limited to the following issues: roadway design and length, driveway grades, dead-end road lengths, turnarounds, turnouts, signage, and emergency water standards.

Sincerely,

KIMBERLEY SONE
Division Chief, Resource Management

cc: Allen Robertson, CAL FIRE, Environmental Protection, PO Box 944246, Sacramento, CA 94244-2460
Scot Morgan, State Clearinghouse, Director, PO Box 3044, Sacramento, CA 95812-3044





California Regional Water Quality Control Board San Francisco Bay Region



Linda S. Adams
Acting Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Edmund G. Brown, Jr.
Governor

January 19, 2011

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JAN 20 2011

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

Napa County Conservation, Development & Planning Department
Attn.: Mr. Donald Barrella, Planner
1195 Third Street, Room 210
Napa, CA 94559-3092

**Subject: Comments on Black Forest Vineyard #P09-00243-UP and #P09-00385-EPCA
Notice of Intent to Adopt a Mitigated Negative Declaration**

Dear Mr. Barrella:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the County of Napa's (County's) Notice of Intent (NOI) to adopt a Mitigated Negative Declaration for the Black Forest Vineyard Conversion and Creek Setback Exception Agricultural Erosion Control Plan (ECPA) #P09-00385 and ECPA Conservation Regulation Use Permit Exception (UP) #P09-00243-UP (Project), dated December 30, 2010. The NOI was prepared on behalf of Anthony Peju and Jeff Redding (Project Sponsor). The Water Board also reviewed the Final Judgment for Case No. NSC 26-39559, People of the State of California, Plaintiff, vs. Anthony Peju, et al., Defendants, dated April 13, 2009 (Judgment) regarding past activities at the Project site, which are also addressed by the proposed Project.

Project

The Project would develop 6.4 acres of vineyards at a property located at 321 Dutch Henry Canyon Road, Calistoga, County of Napa (Site), in addition to the 7.8 acres of vineyards already developed on the Site. Additionally, the Project would include the installation and maintenance of erosion control measures on the Site, and a Permit Exception to the stream setbacks required pursuant to Chapter 18.108.25 of the Napa County Code (Conservation Regulations – Stream Setbacks).

Pursuant to the Judgment, the proposed Project would also include the re-establishment of a riparian corridor, and the re-connection of an unnamed creek, which was in part filled and planted as a vineyard (see NOI Figures 3 and 4), to Dutch Henry Creek, a tributary to the Napa River, including the removal of a culvert and flow-diffusion channel currently diverting the flow of the unnamed creek. The Judgment also requires the Defendants to remove a culvert bridge across Burton Creek on the Pope Valley property owned by the Defendants and to re-create three acres of wetlands within the Burton Creek watershed.

Comment 1: The Water Board does not have records that the Project Sponsor obtained the

3.1
3.2
3.3

Comment No.3 - Attachment C

required permits, or any Board approvals, either for the fill of the unnamed creek at the Site described in the NOI, or for the culvert bridge and wetland at the Pope Valley property referred to in the Judgment. The proposed Project at the Site and the actions required by the Judgment at the Pope Valley property both appear to require permits from the Water Board as described below. This should be reflected in the Mitigated Negative Declaration.

The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7)(Porter-Cologne). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the Army Corps of Engineers (Corps), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements for the project under Porter-Cologne.

Activities in areas outside the Corps' jurisdiction (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board under Porter-Cologne. Activities that lie outside of Corps jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs) from the Water Board.

The above approvals are required prior to commencement of project activities, and, at a minimum, prior to placement of fill into state or federal waters.

Comment 2: The NOI includes a request for a Permit Exception for the Project from the County's stream setback regulations. The Permit Exception is requested in part for the corrective actions by the Project Sponsor of activities performed without the proper permits and authorizations from the United States, the State of California, and the County. The Water Board requests that the Permit Exception to the County stream setback requirements not be granted for correcting activities performed without the proper permits and authorizations for reasons described below.

Water Board and State policy require avoidance of the placement of fill into wetlands and waterways to the maximum extent practicable. Projects not adequately demonstrating avoidance and minimization of impacts to wetlands and other waters of the State could result in the Water Board's inability to issue required water quality certification and/or waste discharge requirements for the Project as proposed. That is, such projects may not be approvable as proposed.

To date, as far as we are aware, the Project Sponsor has not submitted the required permit applications to the Water Board. As such, the Project Sponsor has not demonstrated whether impacts were avoided and/or minimized to the maximum extent practicable prior to obtaining the proper permits and authorizations. Maintaining County stream setback requirements would help minimize impacts to the beneficial uses of creeks and wetlands, including wildlife habitat.

Comment No.3 - Attachment C

Failure to obtain required approvals prior to placing fill into waters of the United States and/or waters of the State is a violation of the California Water Code. Water Board approvals are likely required for the work in question. Those applications should include, but are not necessarily limited to, a delineation of waters of the United States at the Site, a mitigation and monitoring plan for mitigation of water quality impacts resulting from the fill of waters of the State, and California Environmental Quality Act documentation. Violations are punishable by penalties of up to \$10,000 per day, plus additional penalties for the volume of fill discharged into waters.

The NOI should be revised to clearly describe past impacts for which mitigation is being proposed as a part of the Project. Because the NOI does not yet clearly describe those impacts or how proposed mitigation was determined for these or proposed future impacts, it is not possible to determine whether the impacts have been mitigated to a level of insignificance. The NOI should clearly describe the impacts, including linear feet and acres of creek and wetlands filled, and proposed mitigation, including location, kind, and deadlines by which it will be completed, and require the Project Proponent to obtain appropriate approvals from the Water Board and other appropriate agencies for its past and proposed future work.

The NOI should also note that the Project Proponent remains subject to imposition of administrative civil liability to the extent it completed work in violation of the CWA, California Water Code, or other relevant codes, regulations, or other requirements.

We would welcome the opportunity to discuss this project further with you and/or the Project Sponsor.

If you have any questions, please contact Fred Hetzel at (510) 622-2357, or via e-mail at fhetzel@waterboards.ca.gov.

Sincerely,

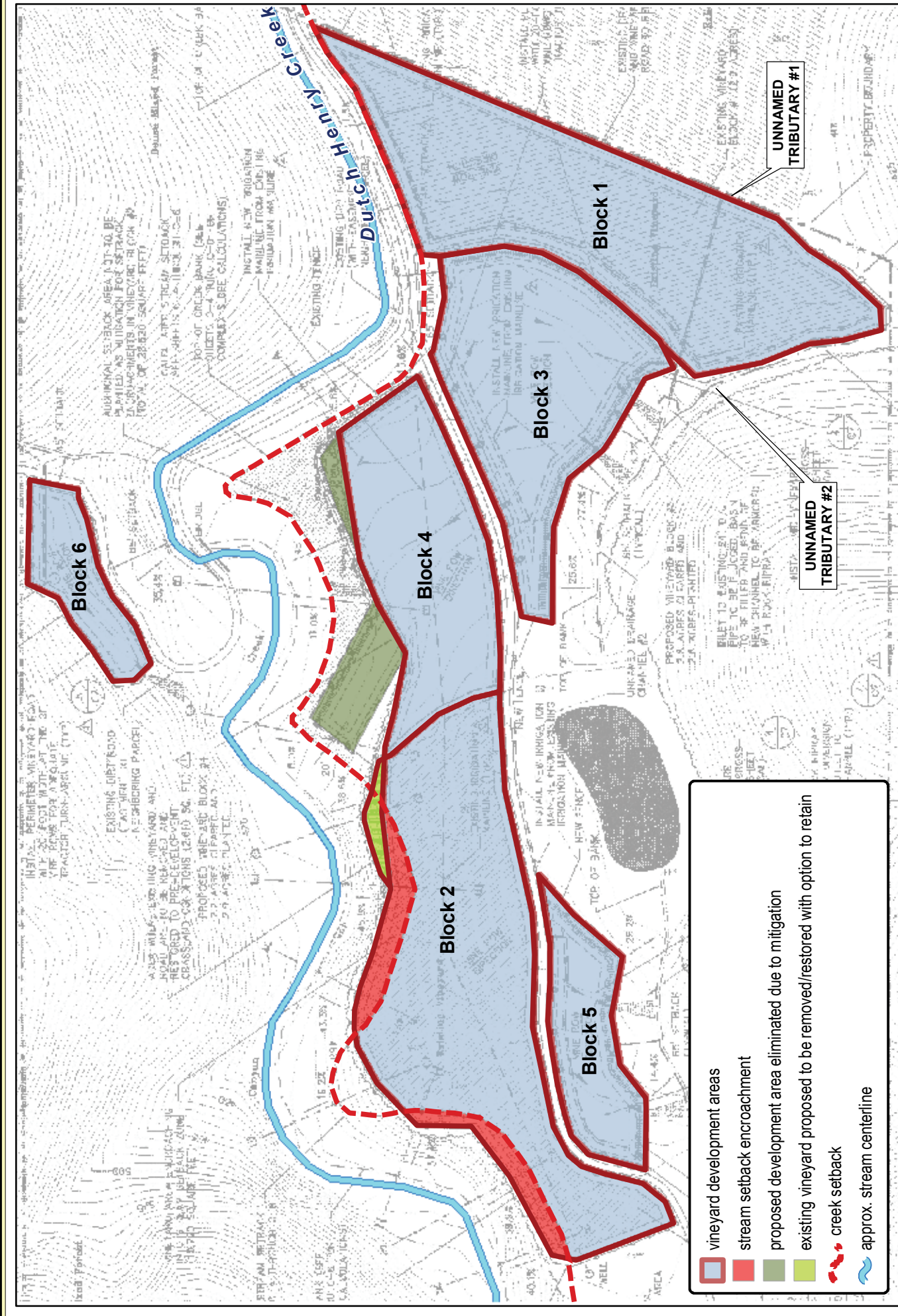


Digitally signed by
Keith H. Lichten, P.E.
Date: 2011.01.18
17:53:33 -08'00'

Keith H. Lichten, P.E.
Senior Engineer

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044
Mr. Anthony Peju, 8466 St. Helena Highway, Rutherford, CA 94573
Mr. Jeff Redding, 2423 Renfrew Street, Napa, CA 94558

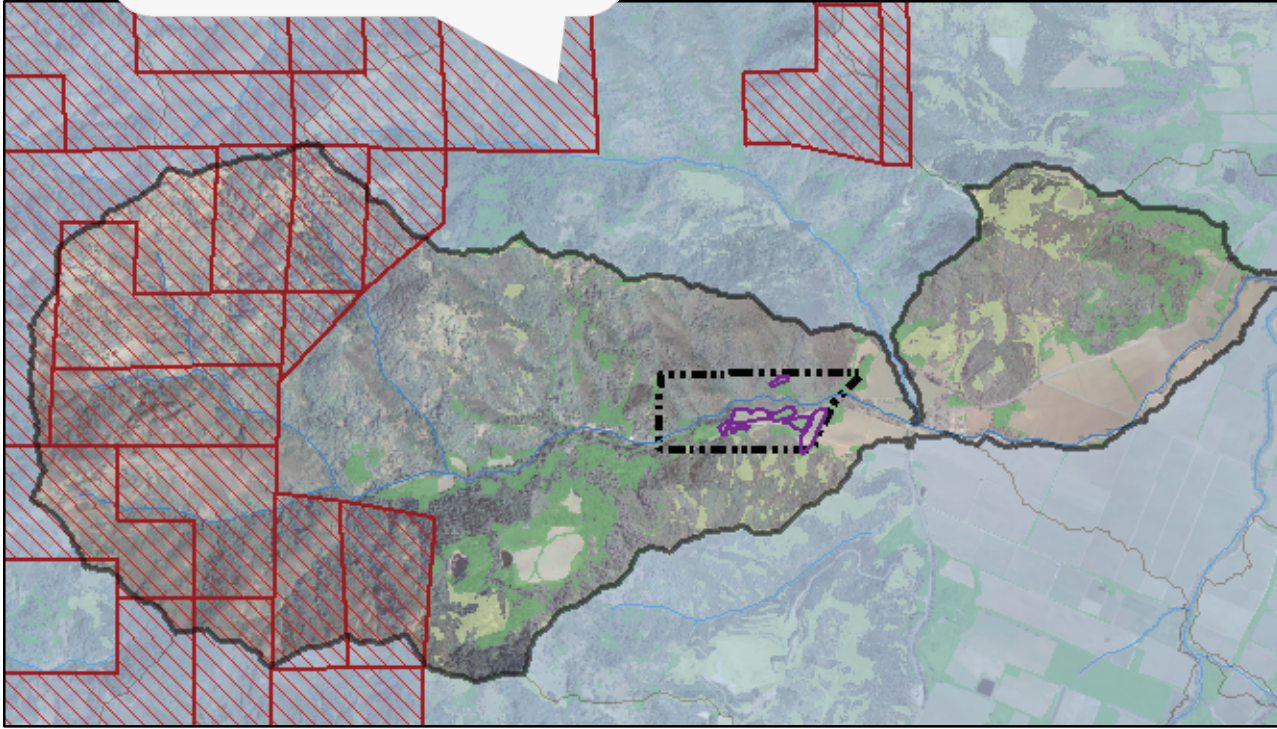
3.4 continued
3.5



ATTACHMENT D: PROPOSED MITIGATED VINEYARD LAYOUT

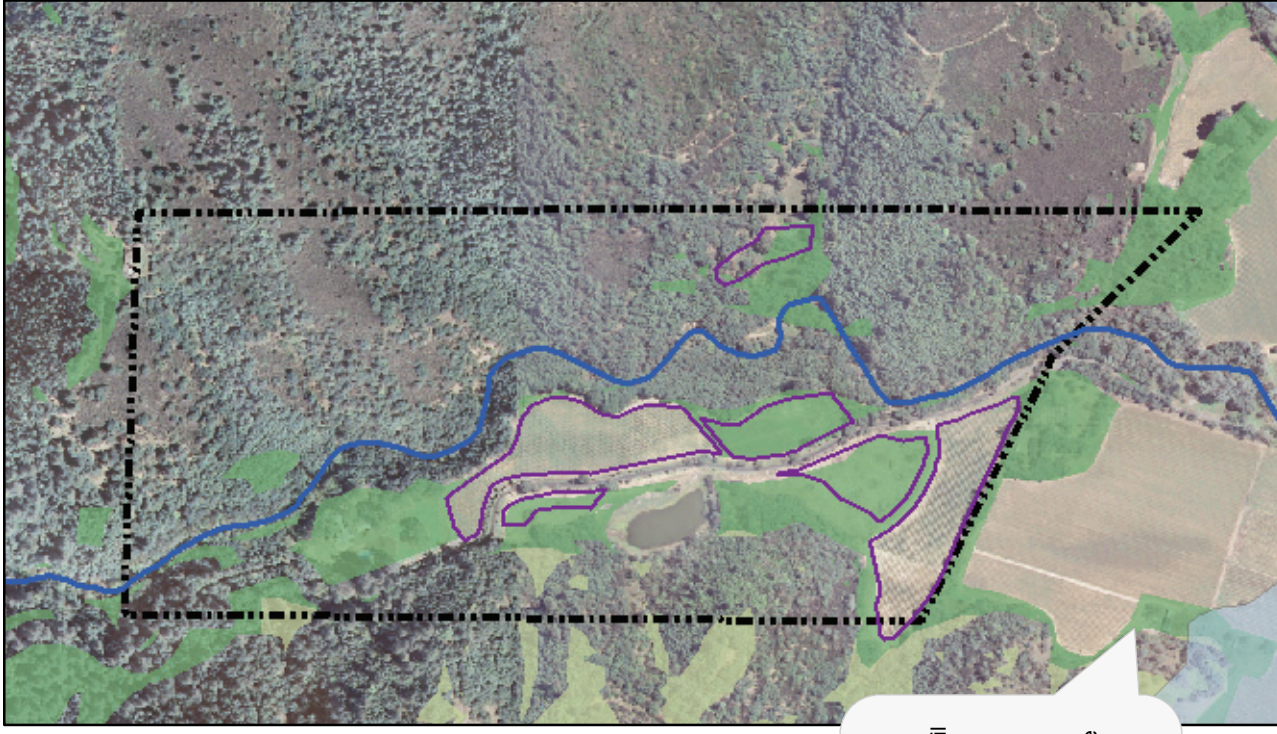
Peju - Black Forest Vineyard





- Peju blocks
- Potentially Productive Soil
 - Prime
 - Marginal
- Drainages
 - Dutch Henry Creek Watershed
 - Other watersheds
- Approx. property line
- Protected lands (Land Trust, etc.)
- Blueline streams

DUTCH HENRY CREEK WATERSHED



- Peju blocks
- Potentially Productive Soil
 - Prime
 - Marginal
- Approx. property line
- Stream centerline

BLACK FOREST VINEYARD

Revised Date: March 16, 2011
 Microsoft Office Map 9.0
 CA State Plane Coordinates
 Zone 11, feet
 Disclaimer: This map was prepared for informational purposes only. No liability is assumed for the accuracy of the data delineated hereon.

ATTACHMENT E: PROPOSED MITIGATED VINEYARD LAYOUT
 Peju - Black Forest Vineyard



July 6, 2009

Tony Peju
Peju Province Winery
8466 St. Helena Highway
P.O. Box 478
Rutherford, CA 94573

Subject: Black Forest Vineyard Biological Assessment

Dear Tony:

At your request, I conducted a biological field assessment of the Black Forest Vineyard property, located just outside Calistoga in Napa County. Prior to the field assessment I recently conducted, I visited the site on March 11, 2009 to assess the conditions specific to Tributary #1 that will be re-routed as part of the settlement agreement. As you know, the details of that assessment are outlined in the March 19, 2009 letter.

On June 23, 2009, I focused on assessing the pre-existing conditions for vineyard planting areas #1-6 as outlined in the Erosion Control Plan, with an emphasis on determining any adverse effects to biological resources due to recent vegetation clearing. Through the use of color aerial photography from 1993 and 2005 and field survey, I was able to ascertain the likely extent and composition of the vegetation in these areas.

Results

The existing Black Forest Vineyard site is mostly composed of mixed evergreen and broadleaf forest dominated by trees such as madrone, Douglas fir, coast live oak, and California bay, intermixed with shrubs such as coyotebrush, toyon, and manzanita. In the currently cleared and planted vineyard areas, much of the vegetation is composed of non-native herbaceous species such as yellow star thistle, ripgut brome, wild oats, Spanish clover, and rose clover. These areas also appear to have been mostly composed shrubs with many of the larger trees retained along the access road and on edges of the cleared areas.

Dutch Henry Canyon also runs through the property and supports common riparian forest/woodland species as well as a developed creekbed and bank with a cobble bottom. The creek was dry at the time of the June survey. The existing pond on the site was approximately 1/3 full at the time of the survey and supports common emergent vegetation such as bulrush and nutsedges.

No special-status plant or wildlife species were observed or found during the surveys.

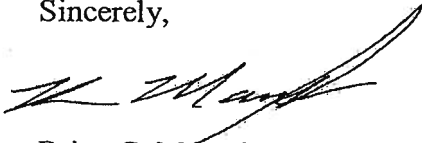
Discussion and Conclusions

Although the site predominantly supported native vegetation prior to clearing, much of the area appears to have been covered with scattered shrubs and trees, with many of the larger trees being retained in the current configuration. Furthermore, the vegetation clearing activities do not appear to have negatively affected the Dutch Henry Canyon watercourse or the tributary, with the exception of the piping of Tributary #1 that was discussed earlier. Specifically, vegetation along the eastern edge of planting areas #1-4 and the western edge of #6 appears to have been confined to upland areas with no encroachment into riparian areas. Moreover, no special-status species or other sensitive habitats appear to have been adversely affected by these activities.

Given these results, it is not likely that the vegetation clearing and subsequent establishment of vineyards in these areas has resulted in net adverse effects to biological resources or otherwise unnatural proliferation of non-native species. As discussed, the realignment of Tributary #1 under the settlement agreement is an exception, although the re-establishment of this feature is expected to result in a net gain of habitat value.

Please call me if you have any questions or need additional information.

Sincerely,



Brian C. Mayerle
Principal Biologist

cc: Royce Cunningham, Monticello Engineering

APPENDIX B

Summary of Acreage to be Cleared

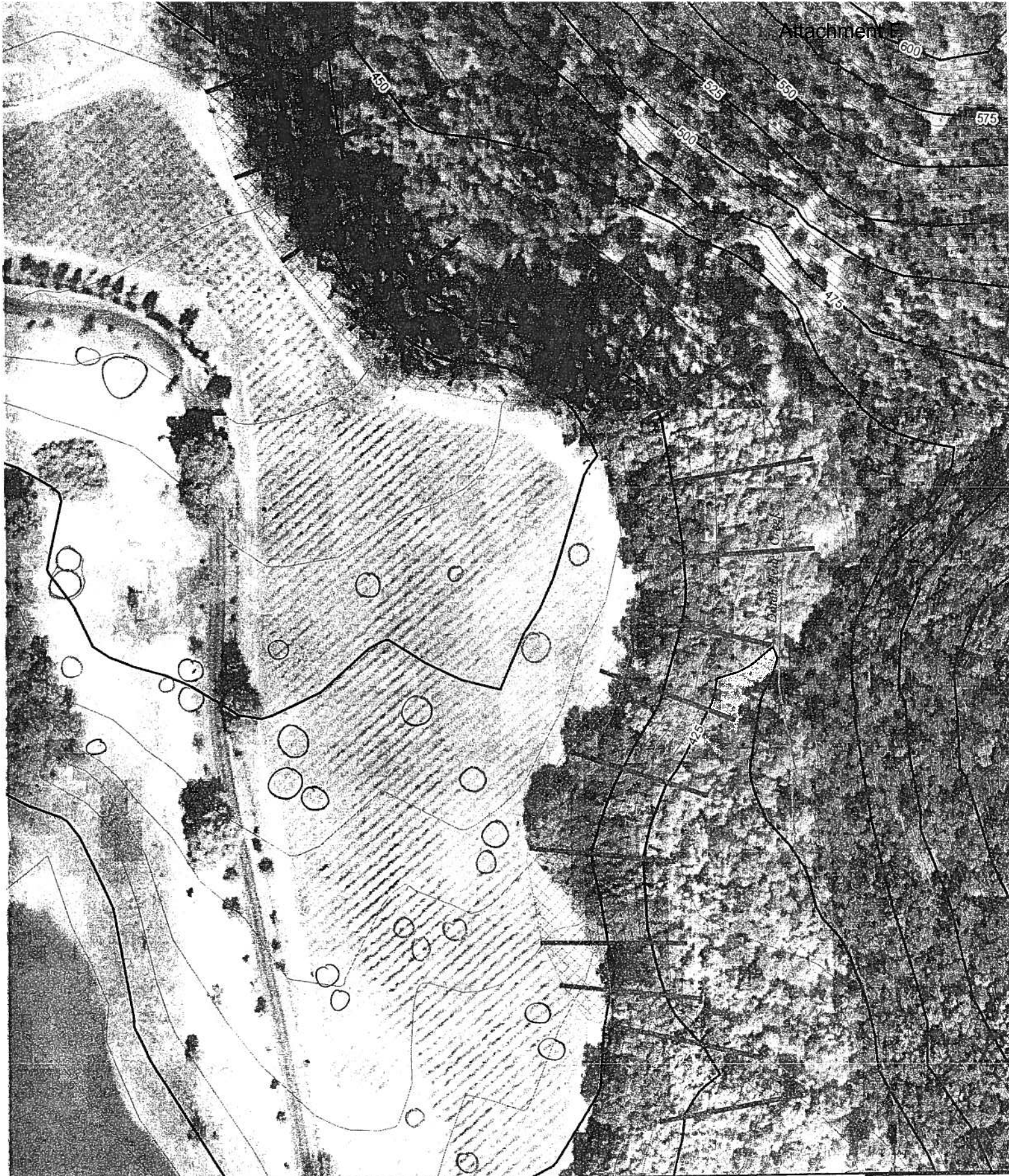
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JUN 7 2010

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

Black Forest Vineyard				Monticello Engineering		
Vineyard Development Project				rwc	12/15/2009	
Summary of Acreages To Be Cleared						
Summary of Assessor's Parcel 018-060-068 (by Vegetative Type)						
<u>Vegetative Cover</u>	<u>Pre-Project Acreage</u>	<u>Acreage Already Cleared</u>	<u>Acreage To Be Cleared</u>	<u>Post-Project Acreage</u>	<u>Percentage of Acreage Cleared</u>	
Dense mixed forest	60.5	2.5	0.4	57.6	4.8%	
Scattered oaks with grassland	9.8	7.7	0.4	1.7	82.7%	
Grassland or meadow	2.3	0.0	0.0	2.3	0.0%	
Dense brush and chaparral	12.7	3.1	0.1	9.5	25.2%	
Vineyard	0.0	0.0	0.0	12.0	0.0%	
Lakes or ponds	1.0	0.0	0.0	1.0	0.0%	
Buildings and roads	1.4	0.0	0.0	3.6	0.0%	
Totals =	87.7	13.3	0.9	87.7	16.2%	
Summary of Cleared Area and Vineyard Acreages By Block						
	<u>Pre-Project Acreage</u>	<u>Post-Project Acreage</u>	<u>Estimated No. Trees Prev. Removed</u>	<u>Estimated No. Addtnl Trees to be Removed</u>		
Block #1 (3.7 gross acres)						
Oak woodland	1.2	0.0	18	0		
Scattered oaks with grassland	1.4	0.0	6	0		
Brush	1.1	0.0	0	0		
Vineyard	0.0	2.9	0	0		
Roads/avenues/turn-arounds	0.0	0.8	0	0		
Totals =	3.7	3.7	24	0		
Block #2 (4.1 gross acres)						
Oak woodland	0.0	0.0	0	0		
Scattered oaks with grassland	3.7	0.0	25	0		
Brush	0.4	0.0	0	0		
Vineyard	0.0	3.3	0	0		
Roads/avenues/turn-arounds	0.0	0.8	0	0		
Totals =	4.1	4.1	25	0		

Black Forest Vineyard				Monticello Engineering	
Vineyard Development Project				rwc	12/15/2009
Summary of Acreages To Be Cleared					
		Pre-Project	Post-Project	Estimated No.	Estimated No.
		Acreage	Acreage	Trees Prev.	Addtl Trees to
				Removed	be Removed
Block #3	(2.8 gross acres)				
Oak woodland		0.6	0.0	7	0
Scattered oaks with grassland		1.2	0.0	16	0
Brush		1.0	0.0	0	0
Vineyard		0.0	2.6	0	0
Roads/avenues/turn-arounds		<u>0.0</u>	<u>0.2</u>	<u>0</u>	<u>0</u>
	Totals =	2.8	2.8	23	0
Block #4	(2.2 gross acres)				
Oak woodland		0.8	0.0	3	6
Scattered oaks with grassland		1.0	0.0	6	0
Brush		0.4	0.0	0	0
Vineyard		0.0	2.0	0	0
Roads/avenues/turn-arounds		<u>0.0</u>	<u>0.2</u>	<u>0</u>	<u>0</u>
	Totals =	2.2	2.2	9	6
Block #5	(0.9 gross acres)				
Oak woodland		0.3	0.0	4	0
Scattered oaks with grassland		0.4	0.0	5	0
Brush		0.2	0.0	0	0
Vineyard		0.0	0.8	0	0
Roads/avenues/turn-arounds		<u>0.0</u>	<u>0.1</u>	<u>0</u>	<u>0</u>
	Totals =	0.9	0.9	9	0
Block #6	(0.5 gross acres)				
Oak woodland		0.0	0.0	0	0
Scattered oaks with grassland		0.4	0.0	0	3
Brush		0.1	0.0	0	0
Vineyard		0.0	0.4	0	0
Roads/avenues/turn-arounds		<u>0.0</u>	<u>0.1</u>	<u>0</u>	<u>0</u>
	Totals =	0.5	0.5	0	3



Peju

APPENDIX B
PORTION OF 2008 AERIAL
PHOTO SHOWING LOCATIONS
OF TREES REMOVED IN
COMPARISON TO 2003
AERIAL PHOTO

Horizontal Datum: NAD 83,
A State Plane Coordinates,
Zone 11, feet

Disclaimer: This map was prepared for
informational purpose only. No liability
assumed for the accuracy of the

Approx Setback distance	Parcels	Slope
Creek Setback Violation	Watershed - 25 ft.	
	Watershed - 5 ft.	
	USGS Blueline Streams	

0 - 5
5.01 - 15
15.01 - 30
30.01+
Feet

County of Napa
Conservation, Development
& Planning
018-060-068-000



Dutch Henry Creek
2.7%